

**CIVIL CASE INFORMATION STATEMENT  
CIVIL CASES**

**In the Circuit Court, Monroe County, West Virginia**

**I. CASE STYLE:**

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**Plaintiff(s)/Petitioner(s)**

**STATE OF WEST VIRGINIA ex rel.  
PATRICK MORRISEY,  
ATTORNEY GENERAL**

**Case #** 14-C-34  
**Judge** Wronz

**vs.**

<b>Defendant(s)/Respondent(s)</b>	<b><u>Days to Answer</u></b>	<b><u>Type of Service</u></b>
<b>BROYLES-MCGUIRE FUNERAL HOME, LLC</b> 500 Main Street Union, West Virginia 24983	<b>30</b>	<b>Personal</b>
<b>JOEL L. MCGUIRE, Individually and as Owner of BROYLES-MCGUIRE FUNERAL HOME</b> Union, West Virginia 24983	<b>30</b>	<b>Personal</b>

**Original and \_\_\_\_ copies of complaint furnished herewith.**

**(Continued On Next Page)**

2014 MAY -9 4:10:38  
CLERK OF COURT  
MONROE COUNTY  
WEST VIRGINIA

<b>PLAINTIFF:</b> STATE OF WEST VIRGINIA ex rel. PATRICK MORRISEY, ATTORNEY GENERAL <b>DEFENDANTS:</b> BROYLES-MCGUIRE FUNERAL HOME, LLC, et al.	<b>CASE NUMBER:</b>
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**II. TYPE OF CASE:**

TORTS	OTHER CIVIL

Asbestos	Adoption	Appeal from Magistrate Court
Professional Malpractice	Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	X Miscellaneous Civil
Product Liability	Mental Health	Other
Other Tort	Appeal of Administrative Agency	

**III. JURY DEMAND:** Yes No X

**CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR):** N/A

**IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?**

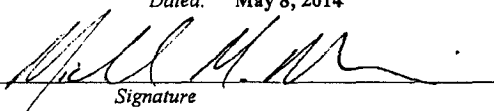
YES NO X  
**IF YES, PLEASE SPECIFY:**

Wheelchair accessible hearing room and other facilities  
 Interpreter or other auxiliary aid for the hearing impaired  
 Reader or other auxiliary aid for the visually impaired  
 Spokesperson or other auxiliary aid for the speech impaired  
 Other: \_\_\_\_\_

**Attorney Name:** Michael M. Morrison, Assistant Attorney General  
 (State Bar No. 9822 )  
**Firm:** State of West Virginia, Attorney General's Office  
**Address:** Post Office Box 1789, Charleston, WV 25326-1789  
**Telephone:** (304) 558-8986

**Representing:**  
 X Plaintiff Defendant  
 Cross-Complainant Cross-Defendant

**Dated:** May 8, 2014

  
 Signature

IN THE CIRCUIT COURT OF MONROE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA  
ex rel. Patrick Morrissey,  
Attorney General,

Plaintiff/Petitioner,

v.

CIVIL ACTION NO. 14-C-34

BROYLES-MCGUIRE FUNERAL HOME, LLC; and  
JOEL L. MCGUIRE, Individually and as Owner of  
BROYLES-MCGUIRE FUNERAL HOME

Defendants/Respondents.

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COMPLAINT FOR PERMANENT INJUNCTION AND RELATED RELIEF

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This action is brought pursuant to the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101 *et seq.* (hereinafter "Consumer Act") and the West Virginia Preneed Funeral Contracts Act, W. Va. Code § 47-14-1, *et seq.* (hereinafter "Preneed Act"). The State of West Virginia ex rel. Patrick Morrissey, Attorney General (hereinafter "State"), has reason to believe that the Broyles-McGuire Funeral Home, LLC, and Joel L. McGuire (collectively hereinafter "Defendants") have violated the Consumer Act and the Preneed Act, and brings this action to enjoin and restrain the Defendants from selling and providing preneed funeral goods and services without a license or certificate of authority issued by the State, and to secure redress for aggrieved consumers. The State seeks permanent injunctive relief, investigative costs, damages, restitution, civil penalties, and attorney's fees.

## **PARTIES**

1. Plaintiff, State of West Virginia, brings this action by and through Patrick Morrissey, Attorney General for the State of West Virginia. The Attorney General is authorized to bring this action pursuant to West Virginia Code § 46A-1-101, *et seq.*, and specifically West Virginia Code § 46A-7-102, § 46A-7-108, § 46A-7-110, § 46A-7-111, and § 47-14-12.

2. Defendant Broyles-McGuire Funeral Home, LLC (“BMFH”) is a West Virginia corporation, and has its principal place of business located at 500 Main Street, in Union, West Virginia.

3. Defendant, Joel L. McGuire (“McGuire”), is a West Virginia resident whose last known address is P.O. Box 129, Union, West Virginia and is the owner and operator of Defendant BMFH.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction to hear this matter pursuant to Article VI, Section 6 of the West Virginia Constitution and W. Va. Code § 51-2-2.

5. Venue is proper in this Court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(f).

## **RELEVANT PERIOD OF TIME**

6. The Defendants have engaged in continuous violations of the Preneed Act and Consumer Act from at least 2010 to the present.

### FACTS COMMON TO ALL CAUSES OF ACTION

7. The Defendant McGuire has operated a funeral home business in Union, West Virginia, and has engaged in selling preneed funeral goods and services to West Virginia consumers by means of preneed funeral contracts<sup>1</sup>, since at least 1988.

8. At all times relevant hereto, Defendant McGuire has formulated, directed, and controlled the day-to-day business policies and practices of Defendant BMFH.

9. Homesteaders Life Company (hereinafter “Homesteaders”) is one of the insurance companies that BMFH used to purchase preneed life insurance policies to fund preneed contracts.

10. No person may sell, make available, receive, hold, control, or manage any funds or other things of value tendered as payment on a preneed funeral contract (hereinafter “preneed contract”) unless such person has obtained a certificate of authority<sup>2</sup> (hereinafter “COA”) or renewal thereof from the Preneed Funeral Services Division of the Office of Attorney General (hereinafter “Preneed Unit”).

11. Every time a preneed contract is sold, the consumer is charged a \$20.00 contract recording fee. This fee, along with a copy of the contract, must be submitted to the Preneed Unit within ten (10) days of the contract’s execution.

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<sup>1</sup> A “preneed funeral contract” is defined as any contract, agreement, mutual understanding, series or combination of contracts, agreements and mutual understandings, including a contract that is financed by the purchase of an insurance policy or annuity, under which, for a specified consideration paid in advance of death in a lump sum or by installments, a person promises to furnish or make available or provide funeral services, funeral goods or burial goods for use at a time determinable by the death of the contract beneficiary who is either named or implied therein. W. Va. Code § 47-14-2(12) (Emphasis added).

<sup>2</sup> A “certificate of authority holder” is defined as any person who sells, makes available, or provides preneed funeral contracts. W. Va. Code § 47-14-2(4).

12. Any payments made by a consumer purchasing a preneed contract must be deposited in a trust account or insurance policy by the COA holder, within thirty (30) days of receipt, to safeguard the funds until death.

13. Every time a preneed contract is serviced, the funeral home is required to file a death beneficiary report<sup>3</sup> with the Preneed Unit, to account for how the preneed contract funds were spent.

14. COA holders must maintain accurate records of all their preneed contracts accounts, and make them available for inspection if so desired by the Preneed Unit.

15. In approximately 1988, the Defendants obtained a COA to sell and provide preneed contracts in the state of West Virginia. At the same time, the Defendants obtained a license for an employee to conduct sales of its preneed contracts with funeral home customers. (*See* Affidavit of Ralph Laton, certified public accountant, auditor for the Preneed Unit, hereinafter “CPA Laton,” attached hereto as Exhibit A, and incorporated by reference herein).

16. On or about March 1, 2013, the State audited the preneed contracts accounts held by the Defendants, and discovered multiple violations of West Virginia law. (Exhibit A).

17. From the results of the audit conducted on March 1, 2013, CPA Laton prepared a chart illustrating the affected consumers from the Defendants’ violations. (*See* chart prepared by Ralph Laton, CPA, auditor for the Preneed Unit, attached hereto as Exhibit B, and incorporated by reference herein).

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<sup>3</sup> A “Death Beneficiary Report” is a document prepared by a COA holder after servicing a preneed contract, which accounts for all expenditures and disbursements from the trust or other proceeds, justifies any increase in price, and explains any substitution of goods or services. *See*, W. Va. C.S.R. § 142-8-8.2.

18. As a result of the audit, CPA Laton identified four separate areas of violation and at least twelve (12) West Virginia consumers who were affected by Defendants conduct. (Exhibits A and B).

19. The audit revealed that at least eight (8) death claims, totaling \$60,512.36, were made by Defendants *prior* to the deaths of any of the preneed contract beneficiaries. (Exhibits A and B).

20. The audit revealed that at least eight (8) death claims, totaling \$60,512.36, were paid to Defendants *prior* to the deaths of any of the preneed contract beneficiaries. (Exhibits A and B).

21. The audit revealed eight (8) preneed contracts for which the Defendants had failed to submit a death beneficiary report with the Preneed Unit to account for withdrawals, expenditures and disbursements of consumers' funds as required by law. (Exhibit A).

22. The audit also revealed that on at least four (4) occasions Defendants accepted funds, totaling \$36,644.05, as advanced payment for funeral arrangements *without* depositing the consumers' funds in a trust account or preneed insurance policy as required by law. (Exhibits A and B).

23. The audit revealed four (4) preneed contracts that the Defendants had failed to record with the State within ten (10) days of executing the contracts, with appropriate fees, as required by statute. (Exhibit A).

#### **FRAUDULENT DEATH CLAIMS**

24. The State repeats and realleges the allegations set forth in paragraphs 1 through 23 and in addition thereto, alleges the following:

25. On or about March 1, 2013, the State conducted an audit of the Defendants pursuant to W. Va. Code § 47-14-3(i), and determined that the Defendants had violated the Preneed Act and WVCCPA. (Exhibit A).

26. The audit revealed that at least eight (8) preneed funeral contracts were purchased from Defendants by West Virginia consumers between August 2, 1999 and January 24, 2006. (Exhibits A and B).

27. Defendants took all eight (8) of those preneed funeral contracts and purchased preneed life insurance policies for each from Homesteaders Life Company. (Exhibits A and B).

28. The audit revealed that, of those eight (8) preneed life insurance policies, seven (7) of those policies were still active according to Defendants but were not listed on the life insurance policy report provided by Homesteaders. (Exhibit A).

29. On April 3, 2013, the director of compliance and government relations from Homesteaders, Tracy A. Kelly, stated that all seven (7) policies were death claims made by and paid to Defendants. (Exhibits A and A-1).

30. None of the contract beneficiaries of those seven (7) policies were deceased. An inquiry with the Vital Registration Office revealed that none of the seven individuals were deceased. (Exhibit A).

31. Affidavits from all seven individuals or their legal representatives were also obtained to confirm that they were still living and that they had neither made claims for nor received any of the insurance proceeds. (See Affidavit of Bertha A. Reynolds as an example of an affidavit submitted, attached hereto as Exhibit C).



32. The audit also revealed Defendants made an additional claim (making it a total of 8 fraudulent death claims) for insurance proceeds at a time when the contract beneficiary (Mary Eva Leach) was still living but has since passed away. (Exhibit A).

33. Defendants made a death claim for insurance proceeds of Mary Eva Leach on April 26, 2010, but her date of death was June 14, 2011. (Exhibit A).

34. A State subpoena produced copies of all eight (8) checks that were written to Defendants and deposited into Defendants' operating account. (*See*, as an example, the death claim form of Bertha A. Reynolds and copy of the check for insurance proceeds, attached hereto as Exhibit C-1).

35. The audit revealed that all eight (8) checks were deposited into Defendants' operating account. (Exhibit A).

36. From the eight (8) death claims made by Defendants, Defendants received \$60,512.36 in insurance proceeds. (Exhibit B).

37. The audit also revealed that Defendants failed to disclose withdrawals of funds belonging to eight (8) consumers. (Exhibit A).

38. Defendants serviced eight (8) preneed contracts without filing death beneficiary reports with the Preneed Unit to account for withdrawals, expenditures and disbursements of the consumers' funds as required by law. (Exhibit A).

### **MISAPPROPRIATION OF FUNDS**

39. The State repeats and realleges the allegations set forth in paragraphs 1 through 38 and in addition thereto, alleges the following:

40. On or about March 1, 2013, the State conducted an audit of the Defendants pursuant to W.Va. Code § 47-14-3(i), and determined that the Defendants had violated the Preneed Act and WVCCPA. (Exhibit A).

41. The audit revealed that on at least four (4) instances where Defendants accepted funds as advanced payment for funeral arrangements without depositing the consumers' funds in a trust account or preneed insurance policy as required by law. (Exhibit A).

42. The four (4) consumers that paid Defendants advanced payment for funeral arrangements were Jeanette B. Canterbury (\$8,402.89), Phyllis A. Crosier (\$9,900.00), Dwight E. Bostic for Alice and Kenneth Barton (\$9,482.88), and Clinton Moore (\$8,858.28). (Exhibits A and B).

43. The four (4) consumers that paid Defendants advanced payment for funeral arrangements were not told by Defendants what trust account or preneed insurance policy their funds were deposited into as required by law. (*See* Affidavit of Jeanette B. Canterbury, as an example of consumers' lack of knowledge of the whereabouts of their preneed funds, attached hereto as Exhibit D).

44. The audit revealed that Defendants received from the four (4) consumers a total of \$36,644.05 in advanced funds for funeral arrangements without depositing the consumers' funds in a trust account or preneed insurance policy as required by law. (Exhibits A and B).

45. The audit also revealed that Defendants sold the four (4) preneed contracts to consumers without submitting copies of the contracts or the appropriate fees to the Preneed Unit within ten (10) days as required by law. (Exhibit A).

## CAUSES OF ACTION

### First Cause of Action

**(Failure to Place Consumers' Funds in Trust or Insurance Policy  
Violates W. Va. Code § 47-14-5(a)(3), and is a per se Unfair or  
Deceptive Act or Practice in Violation of W. Va. Code § 46A-6-104)**

46. The State repeats and realleges the allegations set forth in paragraphs numbered 1 through 45 and, in addition thereto, alleges the following:

47. West Virginia Code § 47-14-5(a)(3) mandates that:

[A]ll funds paid to or collected by any person as the result of a preneed contract shall, within thirty days after receipt thereof by such a person, be deposited in this state: (i) In the name of a trustee who is a contract seller, provider or person making the preneed funeral contract available, in a state or federally chartered and insured bank, savings institution, building and loan institution located in this state or in a state or federally chartered credit union located in this state; or (ii) under the terms of a trust instrument entered into with a national or state bank having trust powers or a trust company located in this state. In the event a preneed funeral contract is funded by the purchase of an insurance policy or an annuity, the premiums paid on such insurance policy or annuity shall be deposited with an insurer licensed pursuant to the provisions of chapter thirty-three of this code.

48. The Defendants accepted funds from at least four (4) West Virginia consumers in advance payments for preneed contracts, but failed to deposit the consumers' funds in a trust account or insurance policy. (Exhibit A).

49. The conduct of the Defendants in failing to deposit funds from the sale of preneed contract into a trust account or insurance policy violates West Virginia Code § 47-14-5(a)(3), and constitutes an unfair or deceptive act or practice, in violation of W. Va. Code § 46A-6-104.

**Second Cause of Action  
(Omission of Material Fact, as Defined by  
W. Va. Code § 46A-6-102 (7)(M),  
Is an Unfair or Deceptive Act or Practice  
In Violation of W. Va. Code § 46A-6-104.)**

50. The State repeats and realleges the allegations set forth in paragraphs numbered 1 through 49 and, in addition thereto, alleges the following:

51. West Virginia Code § 46A-6-104 provides that:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

52. West Virginia Code § 46A-6-102(7)(M) provides that:

Unfair methods of competition and unfair or deceptive acts or practices means and includes, but is not limited to . . . [t]he act, use or employment by a person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.

53. The Defendants sold preneed contracts to West Virginia consumers without disclosing that they were not depositing the consumers' advance payments in a trust account or insurance policy, as required by law. (Exhibit A).

54. By failing to inform a buyer of a preneed contract that Defendants were not depositing their payments in a trust account or insurance policy, the Defendants have omitted material facts during the course of a sale, which constitutes an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104.

**Third Cause of Action**  
**(Failure to Submit Contracts and Pay Fees**  
**Violates W. Va. Code § 47-14-8(f) and**  
**is a per se Unfair or Deceptive Act or Practice**  
**in Violation of W. Va. Code § 46A-6-104.)**

55. The State repeats and realleges the allegations set forth in paragraphs numbered 1 through 54 and, in addition thereto, alleges the following:

56. West Virginia Code § 47-14-8(f) mandates that:

Beginning on the first day of January, one thousand nine hundred, ninety-seven, the contract buyer shall pay a fee of twenty dollars to the contract seller. The contract seller is to forward such sum and a copy of the contract to the division within ten days after its execution.

57. The Defendants have failed to forward copies of their preneed contracts to the State within ten days of execution. (Exhibit A).

58. The Defendants have failed to forward consumers' twenty-dollar fees to the State within ten days of executing preneed contracts. (Exhibit A).

59. The Defendants' actions in failing to forward copies of their preneed contracts to the State and their requisite fees within ten days of execution violate W. Va. Code § 47-14-8(f), and constitute unfair or deceptive acts or practices, in violation of W. Va. Code § 46A-6-104.

**Fourth Cause of Action**  
**(Failure to Maintain Accurate Records**  
**Violates W. Va. Code 47-14-3(i)(1),**  
**and Constitutes a per se Unfair or Deceptive Act**  
**or Practice in Violation of W.Va. Code § 46A-6-104.)**

60. The State repeats and realleges the allegations set forth in paragraphs numbered 1 through 59 and, in addition thereto, alleges the following:

61. Pursuant to West Virginia Code § 47-14-3(i)(1),

The certificate holder shall keep accurate accounts, books and records in this state of all transactions, copies of all contracts . . . and such other records as the division may require to determine whether such certificate holder is complying with the provisions of this article. Such records must be kept for twelve months after the date of termination of the applicable preneed contract.

62. The Defendants failed to keep accurate accounts, books and/or records of all their transactions, with the result that the true location of consumers' advance payments could not be readily determined. (Exhibits A and D).

63. By failing to keep accurate accounts, books, and/or records of their preneed contract transactions with West Virginia consumers, the Defendants violated W.Va. Code § 47-14-3(i)(1), which constitutes a per se Unfair or Deceptive Act or Practice in violation of W. Va. Code § 46A-6-104.

**Fifth Cause of Action  
(Failure to File Death Beneficiary Reports  
violates W. Va. C.S.R. § 142-8-8.2, and  
is a per se Unfair or Deceptive Act or Practice  
in Violation of W. Va. Code § 46A-6-104.)**

64. The State repeats and realleges the allegations set forth in paragraphs numbered 1 through 63 and, in addition thereto, alleges the following:

65. West Virginia C.S.R. § 142-8-8.2 mandates that:

On or before the first day of January and the first day of July of each year, the trustee and the provider, contract seller or person who made the preneed funeral contract available shall file a report with the Department, describing the goods and services provided after the death of any contract beneficiary during the previous six (6) month period, accounting for all expenditures and disbursements from the trust or other proceeds, justifying by reference to current price lists any increase over the original contract cost and explaining any substitution of goods or services.

66. The Defendants have failed to file death beneficiary reports with the State, to account for all expenditures and disbursements for at least eight (8) preneed contracts the Defendants apparently performed for deceased West Virginia consumers. (Exhibit A).

67. The Defendants' failure to file death beneficiary reports concerning the preneed contracts that they have presumably performed violate W. Va. C.S.R. 142-8-8.2, and constitute unfair or deceptive acts or practices, in violation of W. Va. Code § 46A-6-104.

**Sixth Cause of Action  
(Misrepresentation of Material Fact, as Defined by  
W. Va. Code § 46A-6-102(7)(M),  
Is an Unfair or Deceptive Act or Practice  
In Violation of W. Va. Code § 46A-6-104.)**

68. The State repeats and realleges the allegations set forth in paragraphs numbered 1 through 67 and, in addition thereto, alleges the following:

69. West Virginia Code § 46A-6-104 provides that:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

70. West Virginia Code § 46A-6-102(7)(M) provides that:

Unfair methods of competition and unfair or deceptive acts or practices means and includes, but is not limited to . . . [t]he act, use or employment by a person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.

71. The Defendants made death claims and received life insurance proceeds from at least eight (8) consumers' preneed contracts prior to the deaths of any of those consumers. (Exhibit A).

72. From the Defendants' misrepresentation of consumers deaths in order to receive life insurance proceeds *prior* to the actual deaths of those consumers violate W. Va. Code § 46A-6-102 (7)(M), and constitute unfair or deceptive acts or practices, in violation of W. Va. Code § 46A-6-104.

### **REQUEST FOR RELIEF**

#### **PERMANENT RELIEF**

The State further requests that, upon a final hearing, this Court grant the following permanent relief:

1. An order permanently enjoining the Defendants from violating the Consumer Act and the Preneed Act;
2. An order forever prohibiting the Defendants from selling, making available and/or acting as the provider of any preneed funeral products or services in the State of West Virginia;
3. An order requiring the Defendants to refund all money they received from West Virginia consumers as advance payment for preneed contracts the Defendants have not preformed, and refund all other money received from consumers as a result of the Defendants' violations of the Preneed Act and Consumer Act;
4. An order requiring Defendants to turn over all preneed contracts held by Defendants, and all funds incident thereto, to the State;
5. An order requiring the Defendants to produce any and all documents and records pertaining to any prepayment, or agreement to prepay, for funeral goods or services by any consumer prior to the death of the consumer or payment beneficiary;
6. An order requiring Defendants to cooperate with the State of West Virginia in transferring their preneed contracts to other funeral service providers;



7. An order requiring the Defendants to pay civil penalties to the State in the amount of \$5,000.00 per violation of the Preneed Act and the Consumer Act, pursuant to W. Va. Code § 46A-7-111, based on their willful and repeated conduct as set forth herein;

8. An order requiring the Defendants to pay punitive damages in the amount of three times the actual damages awarded in the judgment, pursuant to W. Va. Code § 47-14-12;

9. An order granting pre-judgment interest on all awards of refunds and civil penalties, pursuant to W. Va. Code § 56-6-29;

10. An order granting reimbursement of all investigation costs, court costs and attorney's fees, pursuant to W. Va. Code § 46A-7-108 and the general equitable powers of this Court. *See State ex rel. McGraw v. Imperial Marketing*, 506 S.E.2d 779 (W.Va. 1998);

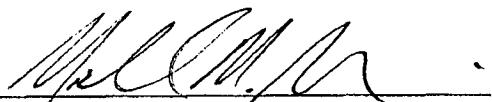
11. Post-judgment interest, pursuant to W. Va. Code § 56-6-29.

The State further requests such other relief as the interests of justice may require.

Respectfully submitted,

STATE OF WEST VIRGINIA ex rel.  
PATRICK MORRISEY,  
Attorney General, Plaintiff/Petitioner

By Counsel



MICHAEL M. MORRISON (WV #9822)  
ASSISTANT ATTORNEY GENERAL  
Consumer Protection Division  
Post Office Box 1789  
Charleston, West Virginia 25326-1789  
Telephone: 304-558-8986  
Facsimile: 304-558-0184

## AFFIDAVIT

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

Ralph W. Laton, being first duly sworn, states as follows:

1. My name is Ralph W. Laton. I am over the age of twenty-one and have personal knowledge of all the facts contained herein.
2. I am a Certified Public Account, and I am an auditor for the Preneed Funeral Services Division (hereinafter "Division") at the Office of the Attorney General of the State of West Virginia.
3. As part of my duties, I audit sellers and providers of preneed funeral contracts ("preneed contracts") in the state of West Virginia, and I monitor compliance with the Preneed Funeral Contracts Act, W. Va. Code § 47-14-1 *et seq.* ("Preneed Act"), and the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 *et seq.* ("WVCCPA").
4. As part of my duties, I am custodian of the records pertaining to the regulation of preneed contract sales, pursuant to the Preneed Act and the WVCCPA.
5. Broyles-Mcguire Funeral Home, LLC ("BMFH") is a seller and provider of preneed contracts which lists its place of business as 500 Main Street, in Union, West Virginia.
6. BMFH has had a certificate of authority to sell and provide preneed contracts since at least 1988.

EXHIBIT  
A

7. On March 1, 2013, I audited the preneed contract accounts of BMFH.
8. After reviewing BMFH's preneed contract files on March 1, 2013, I asked Joel L. McGuire ("McGuire"), owner and operator of BMFH, if he had sold any preneed contracts since 2007 the year that he last registered a preneed funeral contract with the Attorney General's office. McGuire responded he had not.
9. Homesteaders Life Company is one of the insurance companies that BMFH used to purchase preneed life insurance policies to fund preneed contracts. After completing the audit field work and returning to the office I contacted Homesteaders to confirm that policies that were purchased were still active and in place.
10. Upon receiving the Homesteaders report I discovered that seven (7) policies that BMFH showed still active were not on the Homesteaders report.
11. On March 29, 2013 I sent Tracy A. Kelly, Director - Compliance & Government Relations for Homesteaders Life Company, an email inquiring as to the status of these seven (7) policies.
12. On April 3, 2013 Ms. Kelly returned my email stating that all seven (7) policies were death claims made by and paid to BMFH. The email included the date of the each claim and the amount paid on each claim. A copy of the email is attached as Exhibit A-1.
13. After receiving Ms. Kelly's email I contacted the Vital Registration Office and was informed that their records did not reflect that any of these seven (7) individuals were deceased.
14. I obtained affidavits from all seven individuals or their legal representatives stating that they were still living and they had not made a claim for the insurance proceeds.

15. I discovered BMFH made a claim for insurance proceeds at least one other time when the individual was still living. The claim was made on April 26, 2010 for Mary Eva Leach who's date of death was June 14, 2011.

16. I have reviewed documents from Homesteaders Life Company that include copies of checks that were written to BMFH and deposited by McGuire into BMFH's operating account.

17. I have reviewed the bank records of BMFH's operating account, and confirmed that all eight checks were deposited into BMFH's operating account.

18. I have reviewed the bank records of BMFH's operating account, and discovered at least four (4) instances of BMFH accepting funds as advance payment for funeral arrangements without depositing the consumers' funds in a trust account or preneed insurance policy as required by law.

19. I was able to contact all four (4) these individuals and confirm that they had paid BMFH funds as advance payment for funeral arrangements and were not told what trust account or preneed insurance policy their funds were deposited into.

20. These consumers are Jeanette B. Canterbury (\$8,402.89), Phyllis A. Crosier (\$9,900.00), Dwight E. Bostic for Alice and Kenneth Barton (\$9,482.88), and Clinton Moore (\$8,858.28).

21. When I asked McGuire about the preneed funds for these four (4) consumers he acknowledged that he had deposited three of them into BMFH's operating account, and had never placed any of them in a trust account or insurance policy on the consumer's behalf. However, he disputed that the funds paid to him by Dwight E. Bostic were for a preneed contract.

22. The audit revealed that BMFH failed to disclose preneed contracts belonging to four (4) consumers. BMFH had sold the four (4) preneed contracts to consumers without submitting copies of the contracts to the Division within ten (10) days as required by law.

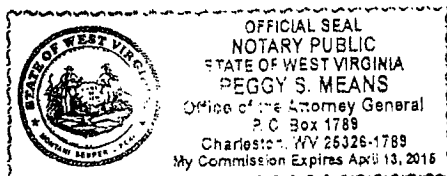
23. The audit revealed that BMFH failed to disclose withdrawals of funds belonging to eight (8) consumers. BMFH had serviced eight (8) preneed contracts without filing death beneficiary reports with the Division to account for withdrawals, expenditures and disbursements of the consumers' funds as required by law.

This is my complete statement.

DATED: 4/10/14  
Ralph W. Laton  
Ralph W. Laton, CPA

Taken, subscribed and sworn to before the undersigned Notary Public in and for the County and State aforesaid on this the 10<sup>th</sup> day of April, 2014.

My commission expires: April 13, 2015  
Peggy S. Means  
Notary Public



**From:** Tracy Kelly <TKelly@Homesteaderslife.com>  
**To:** 'Ralph Laton' <Ralph.Laton@wvago.gov>  
**Date:** 4/3/2013 4:07:45 PM  
**Subject:** RE: Preneed Policies

Ralph,

These were all death claims. I have put the date of the claim and the amount next to each policy. They were all claimed by Broyles-McGuire.

Tracy A. Kelly, JD, FLMI, ACS, AIAA  
Director - Compliance & Government Relations  
Homesteaders Life Company  
5700 Westown Parkway, West Des Moines, IA 50266  
Tel: 800-477-3633, ext. 7731  
Local: 515-440-7731 Fax: 515-440-7690  
Preserving the Value of Funeral Service(r)  
www.homesteaderslife.com

-----Original Message-----

From: Ralph Laton [mailto:Ralph.Laton@wvago.gov]  
Sent: Friday, March 29, 2013 8:34 AM  
To: Tracy Kelly  
Subject: Preneed Policies

Tracy,

The following policies were previously listed with Broyles-McGuire Funeral Home. However, they were not on the report for Broyles-McGuire you sent me on 3/13/13. I need the present status of these policies.

Virginia Croiser	1202035391	8/20/2012	\$7779.29
Cordelia Dunbar	1202105276	8/29/2012	\$3312.71
Millicent Kountz	0002401888	10/26/2011	\$6216.50
Phillip Newsome	1202251122	10/8/2011	\$8875.64
Daisy Parker	1202357065	2/6/2011	\$7749.54
Carl Reynolds, Jr.	1202286405	12/10/2011	\$7127.86
Bertha Reynolds	1202286406	12/7/2010	\$7702.69

If a claim has been paid I need the date, amount and which funeral home was paid.

If it is still an open policy I need which funeral home it is listed with.

Thanks,

Ralph W. Laton, CPA

EXHIBIT  
A-1

NAME: Broyles-McGuire Funeral Home, LLC COA 029

Death benefits have been claimed but Contract Beneficiary was still living at the time of the claim

	NAME	CONTRACT NUMBER	CONTRACT DATE	CONTRACT AMOUNT	INSURANCE COMPANY	BENEFIT AMOUNT	DATE OF CLAIM	DATE OF DEATH
1	Croiser Virginia C	99 - 029 - 002	8/2/99	\$5,736.72	Homesteaders	\$7,779.29	8/20/10	
2	Dunbar Cordelia V	01 - 029 - 001	3/24/01	\$2,574.00	Homesteaders	\$6,476.13	8/29/12	8/31/13
3	Kountz Millicent M	06 - 029 - 001	1/24/06	\$5,205.87	Homesteaders	\$6,216.50	10/26/11	
4	Leach Mary Eva	01 - 029 - 004	6/28/01	\$7,012.69	Homesteaders	\$8,584.71	4/24/10	6/14/11
5	Newsome Phillip Wayne	03 - 029 - 003	10/21/03	\$7,314.08	Homesteaders	\$8,875.64	10/8/11	
6	Parker Daisy M	05 - 029 - 004	6/27/05	\$6,336.15	Homesteaders	\$7,749.54	2/6/11	
7	Rerynolds, Jr Carl B	04 - 029 - 005	5/25/04	\$5,463.36	Homesteaders	\$7,127.86	12/10/11	
8	Reynolds Bertha A	04 - 029 - 004	5/25/04	\$6,486.90	Homesteaders	\$7,702.69	12/7/10	

Total \$60,512.36

Note: The benefit amount for Cordelia Dunbar is the combination of two policies. One for \$3,312.71 and the other for \$3,163.42.

Preneed funds that were never deposited

	NAME	CONTRACT NUMBER	CHECK DATE	CHECK AMOUNT	INSURANCE COMPANY	BENEFIT AMOUNT
1	Moore Clinton		3/16/11	\$8,858.28		\$8,858.28
2	Bostic Dewight		4/21/12	\$9,482.88		\$9,482.88
3	Canterbury Jeanette		1/16/13	\$8,402.89		\$8,402.89
4	Croiser Phyllis		5/25/12	\$9,900.00		\$9,900.00

Total \$36,644.05

Grand Total \$97,156.41

Prepared by Ralph W. Laton, Certified Public Accountant and auditor for the Preneed Funeral Services Division  
at the Office of the Attorney General of the State of West Virginia.

EXHIBIT  
B

AFFIDAVIT

STATE OF WEST VIRGINIA,  
COUNTY OF Monroe to-wit:

I, Bertha A. Reynolds, being over the age of 21 years do hereby depose  
and aver as follows:

1. I am still living.
2. I reside at [REDACTED].
3. My date of birth is [REDACTED].
4. I have purchased a policy from Homesteaders Life Company

through Broyles- McGuire Funeral Home to fund my preneed funeral contract.

5. I have not made a claim for proceeds from said Homesteaders Life  
Insurance policy.

6. I have not requested to cancel or cash surrender said  
Homesteaders Life Insurance policy.

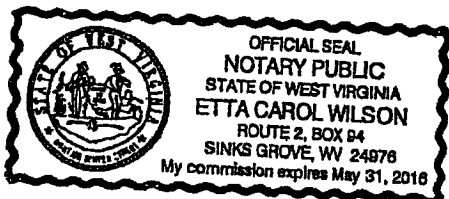
This is my complete statement.

Dated this 30<sup>th</sup> day of Aug 2013.

Bertha A. Reynolds  
Bertha A. Reynolds

Taken, subscribed and sworn to before the undersigned Notary Public in  
and for the County and State aforesaid on this the 30<sup>th</sup> day of August, 2013.

My commission expires May 31, 2016.



Etta Carol Wilson  
Notary Public

EXHIBIT  
C



Person Calling: HEJ

Phone #: [REDACTED]

Policy #: 1202286406

Name: REYNOLDS, BERTHA A

Date: 12/10/2010 Coder ID: WEB

Mail ☐ Need Letter ☐



\*1202286406\*

Date of Death: 12/07/2010

Date of Birth: [REDACTED]

System Date of Birth: [REDACTED]

Funeral Home State: WV

Available Amount: \$7704.27

Funeral Bill Total: \$7702.69

Assign/Bene: BROYLES-MCGUIRE FUNERAL HOME

Notes:

PHONE A CLAIM REQUIREMENTS DATE

- ☒ Proof of Death \_\_\_\_\_  
☐ Copy of DC \_\_\_\_\_  
☐ Assignment or back of draft signed by \_\_\_\_\_  
Beneficiary: \_\_\_\_\_  
☐ Affidavit of No Estate. \_\_\_\_\_  
☒ # of drafts written: 1 \_\_\_\_\_  
☐ Other: \_\_\_\_\_

☒ ALPHA SEARCH (F6) DATE

- None \_\_\_\_\_  
Status: \_\_\_\_\_  
☐ Owner-other # \_\_\_\_\_  
☐ Ben-other # \_\_\_\_\_  
☐ OK Letter sent On \_\_\_\_\_  
☐ Change of FH \_\_\_\_\_  
FH #: \_\_\_\_\_ Letter sent on: \_\_\_\_\_

DEC 20 2010

MAIL CLAIM REQUIREMENT

Did assigned FH perform services -

☐ Yes ☐ No

Please mail claim forms to:

- ☐ Claim statement (Part A-W51)  
☐ Completed and signed by Executor of Estate.  
☐ NOK (if Estate is bene and NOK is signing, affidavit is required)  
☐ Name of Bene: \_\_\_\_\_  
☐ Proof of death  
☐ (Part C-W51)  
☐ Copy of Death Certificate.  
☐ Certified Death Certificate - (Required for TX, LA, MA)

☐ Assign. to FH (Part D-W51)

☐ Completed & signed by:

- ☐ Affidavit of No Estate (Part F-W51) to be completed by executor or family member.  
☐ Copy of Final Bill or statement showing final cost of funeral services. (Required for TX)  
☐ W-9 request for Tax ID # and Certification. (Required for all annuities)  
☐ Proof of death for (named Bene).  
☐ Certificate of completion - ☐ MA ☐ NC ☐ OH ☐ IN  
☐ Associated policies needing name changes-

TEXAS

A. ☐ Certified Death Certificate

B. ☐ Performance warranty

EXHIBIT  
C-1

**Lisa Wind**

---

**From:** ecomm@homesteaderslife.com  
**Sent:** Friday, December 10, 2010 8:34 AM  
**To:** WebClaims  
**Subject:** Internet Claim Request, Policy# 1202286406

**Policy Number:** 1202286406

**Claim Number:** 645948

**Date Claim Requested:** 12/10/2010

**Requested by:** 06117 - BROYLES-MCGUIRE FUNERAL HOME

**Date of Death:** 12/7/2010

**Amount Authorized:** \$7,702.69

**Excess Proceeds:** No



# IMAGE FILE IMPORT

IFI PDF 1 of 1

Page 181 of 196

Transaction 176

Return to Detail Summary Page

## Posting Information

Serial Number [REDACTED]

Posting Date: [REDACTED]

Account Number: [REDACTED]

Amount: [REDACTED]

RT [REDACTED]

Front Image:

		ALL DEATHS VERIFIED WITH SOCIAL SECURITY ADMINISTRATION		1321 100
P.O. Box 1756 / Des Moines, Iowa / 50341-0176				
POLICY/CERTIFICATE NO. <u>8</u>	CLAIM NO. <u>[REDACTED]</u>	DATE <u>[REDACTED]</u>		
PAY TO <u>Brylar - McGuire Funeral Home</u>		<u>\$ 7702.69</u>		
<u>Seven thousand seven hundred two and 69/100</u>		DOLLARS		
DECEASED <u>Betty Reynolds</u>	FUNERAL DIRECTOR'S CERTIFICATION OF PROOF OF DEATH			
DATE OF BIRTH <u>[REDACTED]</u>	SIGNATURE OF FUNERAL DIRECTOR <u>[Signature]</u>			
DATE OF DEATH <u>[REDACTED]</u>				
VOID UNLESS COMPLETED BY FUNERAL DIRECTOR OR AUTHORIZED AGENT	NOT NEGOTIABLE - FOR DEPOSIT ONLY			

Back Image:

Funeral Cost: \$ [REDACTED]	
ENDORSEMENT FOR DEPOSIT ONLY	
<input checked="" type="checkbox"/> Beneficiary/Cash/Assignee	
Social Security # or Tax I.D. #	<input type="checkbox"/> Yes
If a pre-death assignment has been executed, no further endorsement is required by the named beneficiary in the policy.	
If a post-death designation is made by the beneficiary, the beneficiary must sign in the endorsement section above, provide their Social Security Number, and, if subject to backup withholding under the Internal Revenue Code, check the box marked "Yes."	
Completion of the above items is under penalty of perjury	

AFFIDAVIT

STATE OF WEST VIRGINIA,  
COUNTY OF Greenbrier to-wit:

I, Jeanette B. Canterbury, being over the age of 21 years do hereby  
depone and aver as follows:

1. On or about January 16, 2013, I purchased a preneed funeral contract from Broyles-McGuire Funeral Home in Union, West Virginia.
2. I paid Broyles-McGuire Funeral Home the sum of \$8,402.89 for the purchase. A copy of my check is attached as Exhibit Canterbury-1.
3. I do not know where my preneed funeral money is.

This is my complete statement.

Dated this 5<sup>th</sup> day of September 2013.

Jeanette B. Canterbury  
Jeanette B. Canterbury

Taken, subscribed and sworn to before the undersigned Notary Public in  
and for the County and State aforesaid on this the 5<sup>th</sup> day of September 2013.

My commission expires September 5, 2013

Ruth B. Priddy  
Notary Public

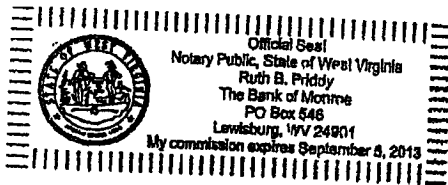


EXHIBIT  
D